

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A24 246 047 - Miami

Date:

APR - 4 1997

In re: GABRIEL BERNARDO MARTINEZ-VEGA

IN BOND PROCEEDINGS PURSUANT TO 8 C.F.R. § 242.2(d)

APPEAL

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APPLICATION: Redetermination of bond

The respondent has timely appealed from the Immigration Judge's decision finding that he was without jurisdiction to consider the respondent's motion to remove or reduce the respondent's bond. The respondent argues that pursuant to 8 C.F.R. §§ 242.2(d) and (e), the Immigration Judge has jurisdiction over his redetermination request. The respondent's request for oral argument is denied. See 8 C.F.R. § 3.2(h). The appeal will be sustained and the record will be remanded to the Immigration Court.

On January 29, 1990, the Immigration and Naturalization Service took the respondent into custody and set a \$50,000 bond. On February 8, 1990, an Immigration Judge denied the respondent's request for a change in his custody status. The respondent apparently was released after a nonexecutable surety bond was placed on his residence for the \$50,000 amount. The respondent petitioned to the Immigration Judge for a reduction or removal of his bond almost 6 years later, on December 18, 1995, after he faced foreclosure on his residence and filed for bankruptcy.

On February 20, 1996, the Immigration Judge held that he did not have jurisdiction over the respondent's request for a change in his bond, concluding that jurisdiction was vested with the District Director. On this same date, the Service again took the respondent into custody, alleging that the respondent had breached the conditions of his bond by failing to appear for deportation on October 10, 1995, pursuant to a Service request to surrender. The respondent filed a bond redetermination request with the District Director on March 8, 1996. The respondent subsequently filed a petition for a writ of habeas corpus in the United States District Court for the Southern District of Florida arguing, inter alia, that the respondent had in fact surrendered to the Service on October 10, 1995, as directed. On April 15, 1996, the respondent entered into a Stipulation of Voluntary Dismissal with the Service, stating that the Service would reinstate the respondent's \$50,000 bond and that the respondent would be released. The respondent was released on April 15, 1996. On April 19, 1996, the respondent again filed a motion with the Immigration Judge to remove or reduce his bond. On April 24, 1996, the Immigration Judge denied the respondent's request for bond, stating that he did not have jurisdiction over the

respondent's motion. It is this April 24, 1996, decision by the Immigration Judge from which the respondent now appeals.

A request for a subsequent bond redetermination may only be granted "upon a showing that the alien's circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 3.19(e). The respondent most recently had the merits of a bond redetermination request addressed by the Immigration Judge on February 8, 1990. Since that time, the respondent contends that the criminal charge that was the basis for the Service's suspension of his Conditional Permanent Resident status has been dismissed, the respondent's home has been put into foreclosure, and he has applied for suspension of deportation. It also appears from the record that the only criminal charge in the Order to Show Cause issued against the respondent may have been erroneous as, according to the respondent's criminal record, his arrest for carrying a concealed firearm never led to a conviction. We find that the respondent has established that his circumstances have changed materially since his prior bond redetermination such that a subsequent bond redetermination is warranted.

A question remains, however, as to whether the District Director or the Immigration Judge has jurisdiction over the respondent's bond redetermination. In order to decide this question, we must determine whether an intervening release of an alien from custody divests an Immigration Judge of jurisdiction over subsequent bond redetermination requests. An Immigration Judge clearly has jurisdiction over bond redetermination requests when an alien is in custody and for 7 days after the alien's release from custody. 8 C.F.R. § 242.2(d). In the instant case, however, the respondent was released from custody and then, 6 years later, returned to custody. It is within 7 days of his release from this second custody period that the respondent filed a bond redetermination request with the Immigration Judge. Thus, the narrow issue in this case is whether an Immigration Judge has jurisdiction to consider the bond redetermination request of an alien who has been released and returned to custody when that request is filed within 7 days of the alien's second release from custody. We find that an Immigration Judge does have jurisdiction over such bond redetermination requests.

In describing the authority of Immigration Judges over bond redetermination proceedings, the regulations state: "if the respondent has been released from custody, an application for amelioration of conditions must be made within seven (7) days after the date of such release." 8 C.F.R. § 242.2(d); see also Matter of Chew, 18 I&N Dec. 262 (BIA 1982). The regulations specify two circumstances under which an Immigration Judge loses jurisdiction over bond redeterminations: "[a]fter a deportation order becomes administratively final or if recourse to the Immigration Judge is no longer available because the seven day period established by this paragraph has expired." 8 C.F.R. § 242.2(d). Under those circumstances, jurisdiction lies with the District Director.¹

1/ Although the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Division C of the Departments of Commerce, Justice, and State, and the Judiciary Appropriations Act for 1997, Pub. L. No. 104-208, 110 Stat. 3009, __ (enacted Sept. 30, 1996) ("IIRIRA") modified several aspects of the Immigration and Nationality Act's provisions regarding detention and custody, it did not modify the circumstances under which the Immigration Judge and the District Director each have jurisdiction over
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Although a review of the cases involving Immigration Judges' jurisdiction over bond proceedings indicates that the Board has not resolved the exact issue raised by this case, we conclude that pursuant to regulations, the Immigration Judge retains jurisdiction over a bond redetermination request for 7 days after the alien is released from custody, regardless of whether the alien had previously been detained and released. The regulations clearly state that the Immigration Judge has jurisdiction for 7 days after an alien "has been released from custody" and makes no distinction for subsequent periods of detention. 8 C.F.R. § 242.2(d). Further, the regulations do recognize that subsequent periods of detention may occur when an alien's release is revoked. 8 C.F.R. 242.2(e). The regulations explicitly state that the jurisdictional rules for such subsequent release periods are the same as the rules for the initial custody period. The respondent in the instant case was released from Service custody and filed his redetermination request with the Immigration Judge 4 days after his release. Consequently, the Immigration Judge had jurisdiction over the respondent's bond redetermination.

Moreover, the regulations are explicit about when jurisdiction lies exclusively with the District Director and no longer with the Immigration Judge, i.e., once a final deportation order has been issued and after 7 days have elapsed from the date the alien is released from custody. Because the respondent filed his redetermination request prior to 7 days after his release and because no final deportation order has been rendered in the respondent's case, the District Director does not have jurisdiction over the respondent's redetermination request; jurisdiction lies with the Immigration Judge.

In reaching our decision in this case, we have carefully considered the Immigration Judge's rationale for concluding that he did not have jurisdiction over the respondent's bond redetermination request set forth in his Memorandum of Bond Redetermination, dated May 22, 1996 and adopted by the Service on appeal. The Immigration Judge found that the respondent's release pursuant to the Stipulation of Voluntary Dismissal is not the type of "release from custody" contemplated by the regulations. However, we find that the reason for the respondent's release is not material to the issue of whether the Immigration Judge had jurisdiction to consider the respondent's bond redetermination request.

The Immigration Judge further found that the respondent agreed to the amount of \$50,000 in the Stipulation and that his effort to "change the terms of the agreement by resorting to a third party would place the Respondent in a much greater position at the expense of the Service." We find, however, that the Stipulation merely returned the parties to the position they had been in prior to the respondent's being taken into custody the second time. So long as the regulatory requirements for a bond redetermination request are satisfied, therefore, there is nothing that would preclude consideration of a subsequent request. Further, although the parties were returned to their prior position in regards to the amount of bond, the question of what forum had jurisdiction over subsequent redetermination requests is a separate one. As we have discussed above, the regulations govern the conditions under which the Immigration Judge and the District

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bond redetermination requests. See 62 Fed. Reg. 10,361 (1997) (to be codified at 8 C.F.R. § 236.1(d))(interim rule Mar. 6, 1997).

Director each have jurisdiction and in the instant case, the respondent's detention placed him under the Immigration Judge's jurisdiction.

The Immigration Judge also stated that the Stipulation does not guarantee the respondent recourse to the Immigration Court for a bond redetermination and notes that a sworn statement executed by the Assistant United States Attorney who signed the Stipulation indicates that she did not promise that the Immigration Court would have jurisdiction over a subsequent bond redetermination. Thus, the Immigration Judge concluded that exercising jurisdiction would violate the terms of the Stipulation. It is true that the terms of the Stipulation do not guarantee that the Immigration Judge would consider a subsequent bond redetermination request and we accept the Assistant United States Attorney's statement that she did not make any such promise to the respondent or his counsel. Nevertheless, there is nothing in the Stipulation that precludes jurisdiction by an Immigration Judge, nor is there any provision in the Stipulation requiring the respondent to forego future redetermination requests. Thus, we conclude that consideration of the respondent's bond redetermination request would in no way violate the Stipulation entered into by the parties.

For the foregoing reasons, we conclude that the Immigration Judge had jurisdiction over the respondent's bond redetermination request. Consequently, we will remand the record to the Immigration Court for an evaluation of the respondent's request for a redetermination of his bond.

We note that during the pendency of the respondent's appeal, Congress enacted the Transition Period Custody Rules ("transition rules") in section 303(b)(3) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Division C of the Departments of Commerce, Justice, and State, and the Judiciary Appropriations Act for 1997, Pub. L. No. 104-208, 110 Stat. 3009 (enacted Sept. 30, 1996) ("IIRIRA"). Pursuant to our decision in Matter of Valdez, Interim Decision 3302 (BIA 1997), the respondent's bond redetermination is now governed by the transition rules and the Immigration Judge should consider those rules upon remand. See also Matter of Noble, Interim Decision 3301 (BIA 1997).

ORDER: The record is remanded to the Immigration Court for further action consistent with the foregoing opinion.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
MIAMI, FLORIDA

IN THE MATTER OF)
)
GABRIEL BERNANRDO MARTINEZ-VEGA)
A24-246-047) IN DEPORTATION PROCEEDINGS
)
RESPONDENT)

MEMORANDUM OF BOND REDETERMINATION

This memorandum is prepared relative to the Respondent's Motion to Remove/Reduce Bond filed with the Court on April 19, 1996. The procedural history of this case prior to the filing of the present motion is as follows:

-On February 6, 1990 an Order to Show Cause was filed with the Immigration Court.

On February 20, 1990, the Respondent was released from custody by the Immigration and Naturalization Service ("Service") pursuant to a \$50,000 bond.

On April 15, 1991, the Respondent was granted voluntary departure.

On December 13, 1995, the Respondent filed a motion to reopen his deportation proceedings to apply for suspension of deportation.

On December 18, 1995, the Respondent filed an Emergency Motion to Remove/Reduce Bond.

On February 2, 1996, the Respondent's motion to reopen was granted by the Court.

On February 20, 1996, after hearing arguments by the Respondent and the Service, the Court determined that it lacked jurisdiction to hear the merits of the the Respondent's Emergency Motion to Reduce/Remove Bond Matter of Uluocha, 20 I&N Dec. 133 (BIA 1989); Matter of Chow, 18 I&N Dec. 262 (BIA 1982); 8 CFR 242.2(d) (1996).

At some time after the February 20, 1996 hearing, the Respondent was taken into custody by the Service.

On March 27, 1996, the Respondent filed a petition for writ of habeas corpus with the United States District Court for the Southern District of Florida.

On April 12, 1996, the Respondent and an Assistant United States Attorney entered into a Stipulation of Voluntary Dismissal whereby the Respondent agreed to withdraw his petition for writ of habeas corpus, the Service agreed to reinstate the \$50,000 bond on the Respondent.

On April 15, 1996, the Respondent was released from custody pursuant to the stipulation.

The Respondent subsequently filed the present motion with the Court on April 19, 1996. The Respondent alleges that the Court now has jurisdiction to conduct a bond redetermination hearing insofar as the Respondent was released from custody less than seven days prior to the request for redetermination.

The Respondent relies upon the language of 8 CFR 242.2(d) which states that "if respondent has been released from custody, an application for amelioration of conditions [before an Immigration Judge] must be made within seven (7) days after the date of such release." The Respondent maintains that his release from custody on April 15, 1996 pursuant to the stipulation of dismissal was a type of "release from custody" contemplated by the above cited regulation.

Despite the Respondent's assertions, the Court concludes that the Respondent was not released from custody as contemplated by 8 CFR 242.2(d). The Court notes that the Stipulation which resulted in the Respondent's release from custody indicates that the original bond of \$50,000 would be "reinstated." In other words, the Court finds that the effect of the agreement entered into by the Respondent was to place the Respondent in the same position that he held prior to being taken into custody subsequent to the February 20, 1996 hearing. At that time, this Court did not have jurisdiction over this matter, and the Court finds that it lacks jurisdiction at this time as well insofar as the Respondent agreed to accept the status quo ante in connection with his agreement with the Service.

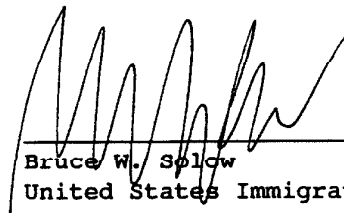
The Court also notes that the Respondent's release from custody was made pursuant to a negotiated stipulation by the Respondent, through his attorney, and the Immigration and Naturalization Service, through its attorney, the United States Attorney for the Southern District of Florida. Although the Respondent has asserted that the United States Attorney did not

have independent authority to negotiate the amount of the bond upon which the Respondent would be released, the Service, as the client, could have authorized a reduction in the amount of the bond. However, the Respondent did not request a that the stipulation be conditioned upon an amount less than \$50,000, and he specifically agreed to the amount of \$50,000. To permit the Respondent to, in effect, change the terms of the agreement by resorting to a third party would place the Respondent in a much greater position at the expense of the Service. This does not appear to be the situation contemplated by the Stipulation of Dismissal agreed to by the parties. On its face, the stipulation of the parties clearly expresses the intent to return to the status quo ante. The document does not guarantee the Respondent recourse to this Court for a bond redetermination, and according to a sworn statement by the Assistant United States Attorney who joined in the stipulation with the Respondent, no such promise or guarantee was made during the negotiations. For that reason, the Court finds that to exercise jurisdiction is not only improper in this case, but it would also violate the terms of the Stipulation of Voluntary Dismissal, to which both parties agreed.

For the foregoing reasons, the Court finds that it currently lacks jurisdiction to consider the Respondent's motion for reconsideration of bond, and the following order shall be entered.

IT IS ORDERED that the Respondent's Motion to Remove/Reduce Bond be denied for the reasons set forth above.

Dated this 22 day of May, 1996.



Bruce W. Solow
United States Immigration Judge

BWS/jdm
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